

REMARKS

Claims 1-45 are currently pending. In the Final Office Action mailed September 19, 2007 (hereinafter, "Office Action"), the Examiner rejected claims 1-45 under 35 U.S.C. § 112, ¶ 2, as allegedly being indefinite; rejected claims 1-3, 5-9, 14-17, 19-23, 28-31, 33-37, and 42-45 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2001/0047336 to Maycock, Jr. et al. (hereinafter, "*Maycock*") in view of U.S. Patent Publication No. 2002/0026348 to Fowler et al. (hereinafter, "*Fowler*"); and rejected claims 4, 10-13, 18, 24-27, 32, and 38-41 under 35 U.S.C. § 103(a) as being unpatentable over *Maycock*, *Fowler*, and U.S. Patent Publication No. 2002/0069122 to Yun et al. (hereinafter, "*Yun*").

By this response, Applicants propose amending claims 1, 15, and 29. Accordingly, upon entry of the proposed claim amendments, claims 1-45 will remain pending.

Based on the following remarks, Applicants respectfully traverse the above rejections under 35 U.S.C. §§ 103(a) and 112, ¶ 2, and respectfully request allowance of claims 1-45.

I. Rejection Under 35 U.S.C. § 112, ¶ 2

The Examiner rejected claim 1 under 35 U.S.C. § 112, ¶ 2, as allegedly being indefinite. Specifically, according to the Examiner, "the phrase 'selected vendor' renders the claim indefinite because no vendor is actually selected in the claim." Office Action, p. 2.

While Applicants respectfully disagree with this characterization of claim 1, Applicants have nevertheless amended claim 1 to expedite prosecution. In particular,

Applicants have amended claim 1 to recite, *inter alia*, "receiving an indication from the consumer of a selected vendor to be associated with the first account component." Although not rejected by the Examiner under 35 U.S.C. § 112, ¶ 2, independent claims 15 and 29 have been similarly amended.

Accordingly, based on the foregoing amendments and remarks, the rejection under 35 U.S.C. § 112, ¶ 2, is improper, should be withdrawn, and claim 1 allowed.

In addition, the Examiner rejected claims 1, 10-14, 15, and 29 under 35 U.S.C. § 112, ¶ 2, stating that "the phrase 'first fees' and 'second fees' renders the claims indefinite" *Id.* In particular, the Examiner alleges that "it is not clear whether the first fees and second fees of claims 10-13 are the **same or related to** the one or more fees adjusted in claim 1." Office Action, pp. 2-3 (emphasis added). Thus, while the Examiner states that the claims are rejected as being indefinite, the Examiner's further comments suggest that the claims may actually be rejected under 35 U.S.C. § 112, second paragraph, as failing to point out and distinctly claim the invention by "fail[ing] to interrelate essential elements of the invention" *M.P.E.P.* § 2172.01, 8th Ed., Rev. 6 (Sept. 2007).

However, according to the *M.P.E.P.*, "it is not essential to a patentable combination that there be interdependency between the elements of the claimed device or that all the elements operate concurrently toward the desired result." *Id.* (citation omitted). Moreover, "[a] claim does not necessarily fail to comply with 35 U.S.C. § 112, second paragraph where the various elements do not function simultaneously, are not directly functionally related, do not directly intercooperate, and/or serve independent purposes." *M.P.E.P.* § 2172.01 (citation omitted).

Here, claim 1 includes the recitations of “processing purchase transactions with the selected vendor based on the first account parameter,” “processing purchase transactions with other vendors based on the second account parameter,” and “adjusting one or more fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined period of time.” Claim 10 recites, *inter alia*, “wherein processing purchase transactions with the selected vendor comprises: applying first fees to the financial account for purchase transactions with the selected vendor based on the first account parameter.” Claim 11 recites, *inter alia*, “wherein processing purchase transactions with the other vendors comprises: applying second fees to the financial account for purchase transactions with the other vendors based on the second account parameter”

Thus, claim 10 provides a further limitation to the claim 1 recitation of “processing purchase transactions with the selected vendor based on the first account parameter,” and claim 11 provides a further limitation to the claim 1 recitation of processing purchase transactions with other vendors based on the second account parameter.” Neither claim 10, nor claim 11, provide a further limitation to the claim 1 recitation of “adjusting one or more fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined period of time.” Thus, the Examiner is improperly requiring Applicants to interrelate the “first fees,” as recited in dependent claim 10, and the “second fees,” as recited in dependent claim 11, with the “adjusting one or more

fees,” as recited in independent claim 1. This is contrary to the guidelines established in the *M.P.E.P.*

Accordingly, based on the foregoing amendments and remarks, the rejection under 35 U.S.C. § 112, second paragraph, is improper, should be withdrawn, and the claims allowed.

II. Rejection Under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims under 35 U.S.C. §103(a) as being unpatentable over the cited art because a *prima facie* case of obviousness has not been established. The Examiner has the initial burden of factually supporting any *prima facie* conclusion of obviousness. See *M.P.E.P.* § 2142. To do so, the Examiner must first establish the Graham factual findings, and then make a determination whether the claimed invention “as a whole” would have been obvious to a person of ordinary skill in the art at the time of the invention. *Id.*; see also *M.P.E.P.* § 2141(IV). The Graham inquiries include determining the scope and content of the prior art; ascertaining the difference between the claimed invention and the prior art; and resolving the level of ordinary skill in the pertinent art. See *M.P.E.P.* § 2141(II). To make the determination of whether the claimed invention would have been obvious based on the factual findings under Graham, the Examiner must consider factors such as the predictability of the results of combining the prior art references or substituting one known element for another; whether a known technique was used to improve similar devices in the same way; whether a known technique was applied to a known device ready for improvements to yield predictable results; whether there were design incentives or other market forces prompting variations of known work in one field for use in the same or a

different field; and the teaching, suggestion, and motivation contained in the prior art references. See *M.P.E.P.* § 2141(III). The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.

In this case, the rejection of claims 1-45 under 35 U.S.C. § 103(a) is improper because the Examiner erred in at least the factual findings, particularly in the ascertainment of any differences between the claimed invention and the prior art. Specifically, the prior art fails to disclose or suggest, *inter alia*, “adjusting one or more fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in amended independent claim 1.

Maycock discloses “[a] method and system for managing credit card transactions.” *Maycock*, Abstract. According to *Maycock*, “an account holder [is allowed] to enter limitations to create an authorized transaction” *Id.* at ¶ 0030. The steps to create an authorized transaction, as disclosed in *Maycock*, include selecting a credit card account, authorizing a credit limit for an authorized transaction, and selecting a vendor or vendors, and authorizing the length of time to complete a transaction. *Id.* at ¶¶ 0031-0033; FIG. 4.

Maycock fails to disclose or suggest, *inter alia*, “adjusting one or more fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in amended independent claim 1. Indeed, the Examiner

acknowledges that *Maycock* fails to disclose at least this recitation, and instead relies on *Fowler*.

According to the Examiner, “Fowler teaches combo-card wherein a transaction and/or membership card may have one or more and preferable multiple AAPs and/or other marketing programs” Office Action, p. 4. Furthermore, the Examiner states that “Fowler further teaches a rate calculation for performing transactions at specific merchants including earning points on an escalating scale” Office Action, p. 4. Thus, the Examiner appears to be alleging a correspondence between “earning points on an escalating scale” and “adjusting one or more fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in amended independent claim 1. However, *Fowler* also fails to disclose or suggest this recitation of claim 1.

Instead, *Fowler* discloses “automated marketing programs implementing one or more program rules matrix modules that calculate benefits to customers based on one or more customer identifier(s), one or more merchant identifier(s) and one or more customer behavior(s).” *Fowler*, Abstract. Using the example of point allocation to illustrate the benefits, *Fowler* states that “[p]oints may be allocated in a variety of ways, such as a percentage of the transaction amount; an established ratio of points per transaction dollar; fixed points per transaction dollar; and/or minimum and/or maximum number of points per transaction, and the like.” *Id.* at ¶ 0075 (emphasis added). In other words, *Fowler* discloses the **allocation of points**, not “adjusting one or more fees charged to the financial account for purchase transactions with the selected vendor

based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in amended independent claim 1.

Accordingly, because the prior art fails to teach or suggest each and every claim recitation of independent claim 1, the Examiner has failed to establish a *prima facie* case of obviousness. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of amended independent claim 1, as well as claims 2-3, 5-9, 14, and 43, which depend from claim 1.

Amended independent claims 15 and 29, although of different scope, include recitations similar to those of amended independent claim 1, and are therefore allowable for at least the same reasons set forth above. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of amended independent claims 15 and 29.

Claims 16-17, 19-23, 28, and 44 depend from independent claim 15, and claims 30-31, 33-37, 42, and 45 depend from independent claim 29. As explained above, the cited art does not support the rejection of claims 15 and 29. Therefore, dependent claims 16-17, 19-23, 28, 30-31, 33-37, 42, 44, and 45 are allowable for at least the same reasons set forth above in connection with amended independent claims 15 and 29.

By virtue of their dependence from independent claim 1, claims 4 and 10-13 call for a combination including, for example, “adjusting one or more fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time.” As

discussed above, *Maycock* and *Fowler* fail to disclose or suggest at least this element of claim 1.

The Examiner cited *Yun* as teaching, for example, “a financial account management system . . . ,” “applying first fees . . . based on the first account parameter . . . ,” “applying second fees . . . based on the second account parameter . . . ,” “wherein the first and second account parameters are first and second interest rates . . . ,” and “wherein the first and second account parameters include first and second finance charges” Office Action, pp. 7-8. Despite these characterizations, none of which Applicants concede, the reference fails to cure the deficiencies of *Maycock* and *Fowler*, as discussed above. That is, *Yun* also fails to teach or suggest at least “adjusting one or more fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in independent claim 1, from which claims 4 and 10-13 depend.

Accordingly, because the prior art fails to teach or suggest each and every claim recitation of independent claim 1, from which claims 4 and 10-13 depend, the Examiner has failed to establish a *prima facie* case of obviousness. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of dependent claims 4 and 10-13.

Dependent claims 18, 24-27, 32, and 38-41, although of different scope, include recitations similar to those of dependent claims 4 and 10-13, and are therefore allowable for at least the same reasons set forth above. Therefore, Applicants

respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of dependent claims 18, 24-27, 32, and 38-41.

III. Conclusion

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-45 in condition for allowance. Applicants submit that the proposed amendments of the claims do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

In addition, the Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statements are identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,
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